



## 1. Marketing Approval

We may approve you as an IBM Business Partner-Reseller based on information you provided in the application. If we do approve your application, as our IBM Business Partner-Reseller, we approve you under the terms of this Agreement to market to End Users Products and Services specified in this Agreement. You acquire such Products and Services you market from an IBM Distributor.

## 2. Definitions

**End User** is anyone, who is not part of the Enterprise of which you are a part, who uses Services or acquires Products for its own use and not for resale.

**Enterprise** is any legal entity and the subsidiaries it owns by more than 50%

**Machine** is a machine, its features, conversions, upgrades, elements, accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that we approve you to market.

**Product** is a Machine or Program.

**Program** is an IBM Program or a non-IBM Program provided under its applicable license terms, that we approve you to market.

**Service** is the performance of a task, provision of advice and counsel, assistance, or use of a resource that we approve you to market.

## 3. Our Relationship

Each of us agrees that:

1. each of us is responsible for our own expenses regarding fulfillment of our responsibilities and obligations under the terms of this Agreement;
2. neither of us will assume or create any obligations on behalf of the other or make any representations or warranties about the other, other than those authorized;
3. neither of us will bring a legal action against the other more than two years after the cause of action arose, unless otherwise provided by local law without the possibility of contractual waiver;
4. failure by either of us to insist on strict performance or to exercise a right when entitled does not prevent either of us from doing so at a later time, either in relation to that default or any subsequent one;
5. all information exchanged between us is non-confidential, unless both of us agree otherwise in writing;
6. IBM may change the terms of this Agreement on one month's written notice. Otherwise, for any other change to be valid, both of us must agree in writing. Changes are not retroactive. Additional or different terms in a communication from you are void;
7. each of us will comply with all applicable laws and regulations such as those governing consumer transactions; and
8. IBM reserves the right to assign, in whole or in part, this Agreement to any other IBM related company.

## 4. Your Responsibilities to IBM

You agree:

1. to provide us, or our representative, with access to your facilities in order for us to fulfill our obligations and to review your compliance with the Agreement;
2. your rights under this Agreement are not property rights and, therefore, you can not transfer them to anyone else or encumber them in any way;

3. to maintain the criteria we specified when we approved you;
4. to retain records of each Product and Service transaction (for example, a sale, a credit or a warranty claim) for three years and provide us relevant records on request. We may reproduce and retain copies of these records;
5. to report to us any suspected Product defects or safety problems, and to assist us in tracing and locating Products;
6. that you will not offer or make payments or gifts (monetary or otherwise) to anyone for the purpose of wrongfully influencing decisions in favor of IBM, directly or indirectly. IBM may terminate this Agreement immediately in case of a) a breach of this clause or b) when IBM reasonably believes such a breach has occurred or is likely to occur; and
7. that your conduct under this Agreement will be consistent with the antiboycott laws and regulations of the United States.

## **5. Your Responsibilities to End Users**

You agree to:

1. be responsible for customer satisfaction and to participate in customer satisfaction programs as we determine;
2. refund the amount paid for a Product returned to you because the End User returned it to you under the terms of its warranty or did not accept the terms of the license or a money back guarantee we offer End Users. You may return such Products to the IBM Distributor from whom you acquired them for credit;
3. provide installation and post-installation support for the offering you market. For Products and Services we approve you to market, support includes your being the primary contact for Product information, technical advice and operational advice associated with the offering. You may delegate these support responsibilities and those for any other associated products, to another IBM Business Partner who is approved to market such Products. If you do, you retain customer satisfaction responsibilities. Alternatively, such support responsibilities will be provided by IBM if you market the applicable IBM Services to the End User. If you do, we assume customer satisfaction responsibilities for such support;
4. provide a dated written record, such as a sales receipt or an invoice, which specifies the End User's name, the part number or the Machine type/model, and serial number, if applicable;
5. inform your End User, in writing, who the warranty provider is, if other than yourself, and of any other applicable Warranty information, as well as any modification you or the IBM Distributor make to a Product and advise that such modification may void the warranty; and
6. inform your End User that the sales receipt (or other documentation we may specify, such as Proof of Entitlement, if it is required) will be necessary for proof of warranty entitlement and for Program upgrades.

## **6. Status Change**

You agree to give us prompt written notice (unless precluded by law or regulation) of any substantive change or anticipated change to the information supplied in your application. Upon notification of such change, (or in the event of failure to give notice of such change) IBM may, at its sole discretion, immediately terminate this Agreement.

## **7. Marketing Funds and Promotional Offerings**

We may provide marketing funds and promotional offerings. If we do, you agree to use them according to our guidelines and to maintain records of your activities regarding the use of such funds and offering for three years. We may withdraw or recover marketing funds and promotional offerings from you if you breach any terms of the Agreement. Upon notification of termination of the Agreement, marketing funds and promotional offerings will no longer be available for use by you, unless we specify otherwise in writing.

## **8. Production Status**

Each IBM Machine is manufactured from new parts, or new and used parts. In some cases, the IBM Machine may not be new and may have been previously installed. Regardless of the IBM Machine's production status, our appropriate warranty terms apply. Warranty information is available from your IBM Distributor. You agree to inform your End User of these terms in writing.

## **9. Warranty Service**

If we approve you to provide IBM Warranty Service, you agree to do so for those Products specified and according to the guidelines provided to you.

## **10. Marketing of Services for a Fee**

You may market IBM Services which IBM or your IBM Distributor make available to you, to an End User if you 1) marketed a Product under this Agreement to that End User, or 2) are approved under this Agreement to market such Services.

If you market an IBM Service which is eligible for a fee and which your IBM Distributor makes available to you, we will pay the fee to your IBM Distributor. Alternatively, if such IBM Service is not available from your IBM Distributor, but is available to you from us, we will pay the fee to you.

In either case we will pay the fee when 1) you identify the opportunity and perform the marketing activities, 2) you provide the order and any required documents, signed by the End User, and 3) a standard Statement of Work is used, there are no changes, and no marketing assistance from us is required.

Additionally, for Services we specify, and which are not available from your IBM Distributor, we will pay you a fee when you provide us a lead and the following criteria are met; 1) it is submitted on a form we provide to you, 2) it is for an opportunity which is not known to us, and 3) it results in the End User ordering the Service from us within six months from the date we receive the lead from you.

We will not pay you a fee if 1) the machine or program is already under the applicable Service, 2) we have an agreement with the End User to place the machine or program under the applicable Service, or 3) the Service was terminated by the End User within the last six months.

## **11. Remarketing of Services**

Shrink-wrap Services are performed under the terms of the agreement provided with them. If the terms of the agreement are not visible on the shrink-wrap package, you agree to provide (or, if applicable, request your remarketer to provide) the Services terms to the End User before such Services are acquired by the End User.

## **12. Export and Import**

You may actively market Products and Services only within the geographic scope specified in this Agreement. You may not market outside this scope, and you agree not to use anyone else to do so.

### **Export and Import Laws**

You warrant that you will comply with all applicable export and import laws (which in some instances prohibit or restrict in-country marketing to certain End users), when you market Products, Services and technical data. You agree that if you export or import Products, Services and technical data, you, and not IBM, will act as the exporter or importer. Further, you warrant that you are knowledgeable with, and are and will remain in full compliance with, the applicable export and import laws, regulations, orders and policies (including, but not limited to, securing all necessary clearance requirements, export and import licenses and exemptions, and making all proper filings). We may, at our sole discretion, require you from time to time to provide us with written certification relating to your compliance with applicable export and import laws or prohibit you from doing business with certain End Users in order to ensure that you and IBM comply with applicable export and import laws.

You will indemnify us for claims made against us for your failure to comply with applicable export and import laws, regulations or orders.

### **End User Exports**

If an End User acquires a Product for export, our responsibilities, if any, under this Agreement no longer apply to that Product unless the Product's warranty or license terms state otherwise. You agree to use your best efforts to ensure that your End User complies with all applicable export and import laws. Before your sale of such Product, you agree to prepare a support plan for it and obtain your End User's agreement to that plan. Within one month of sale, you agree to provide us with the End User's name and address, Machine type/model and serial number if applicable, date of sale, and destination country.

### **Attainment**

Products you export (or which are acquired by an End User for export) outside the geographic scope of the Agreement will not count toward attainment of your objectives and will not qualify for applicable promotional offerings and marketing funds.

### **13. Trademarks**

We will notify you in written guidelines of the IBM Business Partner title and emblem which you are authorized to use. You may not modify the emblem in any way. You may use our Trademarks (which include the title, emblem, IBM Trademarks and service marks) only:

1. within the geographic scope of this Agreement
2. in association with Products and Services we approve you to market; and
3. as described in the written guidelines provided to you.

The royalty normally associated with non-exclusive use of the Trademarks will be waived, since the use of this asset is in conjunction with marketing activities supporting sales of Products and Services.

You agree to promptly modify any advertising or promotional materials that do not comply with our guidelines. If you receive any complaints about your use of a Trademark, you agree to promptly notify us. When this Agreement ends, you agree to promptly stop using our Trademarks. If you do not, you agree to pay any expenses and fees we incur in getting you to stop.

You agree not to register or use any mark that is confusingly similar to any of our Trademarks.

Our Trademarks, and any goodwill resulting from your use of them, belong to us.

### **14. Liability**

Circumstances may arise where, because of a default or other liability, one of us is entitled to recover damages from the other. In each such instance, regardless of the basis on which damages can be claimed, the following terms apply as your exclusive remedy and our exclusive liability.

We are responsible for the amount of any actual loss or damage, up to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim.

Under no circumstances (except as required by law) are we liable for third-party claims against you for damages, or for special, incidental, or indirect charges, or for any economic consequential damages (including lost profits or savings) even if we are informed of their possibility.

In addition to damages for which you are liable under law and the terms of this Agreement, you will indemnify us for claims made against us by others (particularly regarding statements, representations, or warranties not authorized by us) arising out of your conduct under this Agreement or as a result of your relations with anyone else.

### **15. Electronic Communications**

Each of us may communicate with the other by electronic means, and such communication is acceptable as a signed writing to the extent permissible under applicable law. Both of us agree that for all electronic communications, an identification code (called a "user ID") contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity.

### **16. Ending the Agreement**

Regardless of the contract duration, or any renewal period in effect, either of us may terminate this Agreement, with or without cause, on three months' written notice. If, under applicable law, a longer period is mandatory, then the notice period is the minimum notice period allowable.

If we terminate for cause we may, at our discretion, allow you a reasonable opportunity to cure. If you fail to do so, the date of termination is that specified in the notice.

However, if either party breaches a material term of the Agreement, the other party may terminate the Agreement on written notice. Examples of such breach by you are: if you do not maintain customer satisfaction; if you repudiate this Agreement; or if you make any material misrepresentations to us. You agree that our only obligation is to provide the notice called for in this section and we are not liable for any claims or losses if we do so.

You agree that if we permit you to perform certain activities after this Agreement ends, you will do so under the terms of this Agreement.

## **17. Geographic Scope**

All the rights and obligations of both of us are valid only in the United States and Puerto Rico.

## **18. Governing Law**

The laws of the State of New York, without regard to conflict of laws principles, govern this Agreement.

The "United Nations Convention on the International Sale of Goods" does not apply.

### **Details of Our Relationship**

This Agreement will have a duration of 24 months with a Contract Start Date effective the first of the month following IBM's approval. We will confirm such approval and the Contract Start Date to you in writing.

Unless we specify otherwise in writing, the Agreement will be renewed automatically for subsequent two year periods. However, you may advise us in writing not to renew the Agreement. Each of us is responsible to provide the other three months' written notice if the Agreement will not be renewed.

#### **Products and Services you are approved to market:**

Personal computer Products and associated Services.

This Agreement is the complete agreement regarding this relationship, and replaces any prior oral or written communications between us. Any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original, to the extent permissible under applicable law, and all Products and Services you market and Services you perform under this Agreement are subject to it.